

FREDERICK COUNTY LIQUOR BOARD
Public Meeting Minutes
Monday, January 11, 2016

Those Present: Mrs. Maggi Hays, Board Member
 Mr. Rick Stup, Board Member
 Mrs. Linda Thall, Sr. Asst. County Attorney
 Mrs. Kathy V. Dean, Administrator
 Mr. Harold DeLauter, Alcoholic Bev. Inspector
 Mr. Bob Shrum, Alcoholic Bev. Inspector
 Mrs. Ashley Sklarew, Administrative Specialist V

A Public Meeting was held at 12 E. Church Street, Frederick, Maryland, and was called to order at 9:00 AM by acting Chairman Mrs. Maggi Hays, Mrs. Hays stated that Mr. Zimmerman would not be present for today's meeting because he was out of town.

1. Decision Required: Violation

RE: Rube's Crab Shack
Robert Harne and Robin Harne
for the use of Rube's Crab Shack LLC
t/a Rube's Crab Shack
17308 N. Seton Avenue
Emmitsburg, MD 21727
Application for Class B, on Sale, Beer, Wine and Liquor
11BL3208

Mrs. Dean asked if there was anyone from Rube's Crab shack present for the hearing. No one responded. Mrs. Dean noted that Ms. Harne came into the office on Friday, January 8, 2016 around 3:45 pm to pay a fine that was issued to her establishment. The form was incomplete, as it was missing a signature. Mrs. Dean sent an email to the Board asking if they would accept the form or if Ms. Harne had to be present for the hearing. The Board voted that she needed to be present for the hearing. Mrs. Dean stated the Liquor Board office made an attempt to reach Ms. Harne on Friday and sent an additional message this morning to no avail. Mr. Stup stated that the licensee is in violation for not showing up and paying at the last minute assuming that would take care of the case when the regulations state otherwise.

MOTION: Mr. Stup made a motion to add a violation charge against the licensees for their failure to appear before the Board.

SECOND: Mrs. Hays seconded the motion.

FURTHER DISCUSSION ON THE MOTON:

There was no further discussion on the motion.

VOTE: Mrs. Hays-Aye
Mr. Stup-Aye

The vote was unanimous. **Aye-2, Nay-o (Motioned Passed)**

2. Decision Required: New License

RE: Sotirios Pantzopoulos and Joseph Donegan
For the use of OPA LLC
t/a OPA
50 Carroll Creek Way Suite 130
Frederick, MD 21701
Class B, On Sale Beer, Wine and Liquor
11BL2113

Mrs. Dean stated this is a new application for OPA with a pending Retail Sales Tax license, the Resolution from the LLC, Alcohol Awareness certificate, the Workers Compensation, Zoning, Fire Marshal, Trader's license, and the Inspector's final report. Mrs. Dean swore in the applicants and anyone who wanted to testify (see sign-in sheet). The applicant stated they do not have the zoning application and the Alcohol Awareness certificate to date. Mrs. Dean stated she does have the sales tax license for OPA, however the address is incorrect. The Applicant stated he is just waiting to receive the correct license for sales. Mrs. Dean stated she does have a copy of the Resolution Permit and the Worker Compensation. The projected opening date for this business is February 15th at the latest. Inspector Shrum met with the licensee, but the licensee was not ready for inspection. Inspector Shrum instructed the applicant to reschedule an appointment for re-inspection, and he would come back and re-inspect the establishment. Mrs. Hays asked how many employees will be working in the store. The applicant stated he would have 12 employees on staff and 3 staff members will complete Alcohol Awareness training. There are Sunday hours but no alcohol will be served before 11:00 am. Mr. Stup stated that the applicant needs to apply for an entertainment license since the establishment will have music piped into the establishment.

MOTION: Mr. Stup made a motion for Conditional Approval for the application until February 29, 2016. The applicants are bound by their testimony and application.

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SECOND: Mrs. Hays seconded the motion.

FURTHER DISCUSSION ON THE MOTON:

If the application is not complete by February 29, 2016 the licensee will have to wait until May 1, 2016. Licenses are not issued during the months of March and April because of the Renewal period.

VOTE: Mrs. Hays-Aye
Mr. Stup-Aye

The vote was unanimous. **Aye-2, Nay-0 (Motioned Passed)**

3. Conference

RE: §5.38 Alcohol Sales Ratio Reports

Ms. Stup stated it was the intent to of Board to become compliant with Article 2B of the Annotated Code of Maryland. This law has existed for decades. Frederick County does not have enough inspectors to do the work. The Board was searching for the most convenient way to enforce the code. The thought was that a confidential report would be submitted, and then staff would do random sampling checks. This is very similar to what is done for engineer licenses, survey licenses and many other licenses licensed through the Department of Labor, Licensing and Regulation. They just don't have the inspectors to go out and inspect. Mr. Stup stated the Board is not looking to make this burdensome. Any time that an inspector walks into an establishment, he can demand to see these records on site, and the licensee should have them on hand to review. Mr. Stup stated the goal is to have everyone be in compliance with Article 2B. Mr. Stup stated that he didn't want this to be a hostile exchange of information, and he was hoping for input on individual circumstances.

Public Comments:

Tom Caulfield representing Chubby's BBQ stated he is hostile because it is no one's business what his private sales are. He is an incorporated LLC, a private corporation. He stated he is happy to give percentage amount, but would rather not give a dollar figures. Mr. Caulfield stated this rule has been on the books for ages or decades. Mrs. Hays stated there are a lot of silly rules. Mr. Caulfield stated that was correct and this rule is silly also. He reiterated that he is happy to give percentages, but will not give dollar figures, as they are private records.

Donna Fitzgerald Demmon, stated Shamrock restaurant will be celebrating 53 years of operation in a few weeks. In the early 60's restaurants were only allowed to serve beer and wine. There were no bottled whiskey, Vodka, Rum, Cordials, Cocktails, etc. High alcohol content items were served in only one

Frederick county establishment; that establishment was the Francis Scott Key Hotel. The law read that alcohol could only be served in hotels and only hotels with 101 rooms or more. A few years later it was decided that alcohol could be served in restaurants. Shamrock restaurant was the first to get this license. The information that the Board is requesting will become a matter of public record. People abuse public records.

Mr. Stup was asked by Mr. Caulfield if this was a regulation that the Board came up with or is this State regulation requirement. Mr. Stup stated the Board was looking for the most convenient way to enforce a State law. It is not the goal of the Board to put a burden on the licensees. However, Frederick County must be compliant with the law.

Donna Demmon suggested that the Board allow the licensees to take the report and complete it with the percentages. Right now the restaurants could put down percentage because there is no dollar amounts on the form. It would be easier if this was a yearly process for everyone, provided that they have more than fifteen days to complete the form.

Mr. Stup stated that the form can be modified with the approval of all the Board members. Mrs. Thall recommended that the Board have a public meeting prior to making any changes to the regulation.

Mr. Caulfield asked the Board what is the point of the form, and he stated it is making it difficult to do business in Frederick County. Mr. Caulfield stated that he would have to purchase a \$10,000.00 POS system to give an exact dollar amount. It seems to him that the Board is trying to find an additional reason for the Board to be in existence.

Mrs. Hays asked if the form requires the dollar amounts or whether a ratio would suffice. Ms. Thall stated what the law provides is a percentage. Ms. Hays asked is there a way to make the information private. Ms. Thall stated that the Maryland Public Information Act generally requires that records be available to the public, with certain exceptions. There is an exception in the Public Information Act that states that records that are provided to the government that contain confidential financial or proprietary information are exempt from disclosure under state law. If the Liquor Board received a request for that information it does not have to be made public. Mrs. Hays stated it doesn't sound like something that would be published in a newspaper or available to the public in a general way. Ms. Thall stated if a request came in under the Public Information Act the records would not be provided, because State law exempts confidential proprietary and financial information from disclosure.

Mike Long is the former owner of Bushwallers for 12 years. He said that he was thinking about all of the added paperwork and expenses that he has to do now versus what he had to do 12 years ago. If the licensees have to turn in paperwork, the percentage should be the only thing they should have to provide. It is an added expense to ask his attorney to go through his papers before asking him to prepare his tax returns. This is an expense that he would rather not incur, especially if this is a law that does not get enforced.

Jim Politis, from Beans in the Belfry, believes that notarized percentages are fine. He finds this law burdensome to licensees. He stated that his store is in compliance. He is glad that the Board is looking at some non- burdensome measures to help the licensees with the percentage requirement.

A Licensee stated that the Alcohol Awareness training every 4 years is a bit much. The Licensee stated that soon the next step taken by the Board will be much like in Montgomery County and everyone in the restaurant industry will soon have to take TIPS training.

Donna from Cactus Flats stated she is not going to be able to gather the percentages that the Board is requesting. What happens if the Licensee does not have the percentage that the Board is requesting? Donna stated she would not have purchased Cactus flats if she known that percentages had to be given. The percentages will hurt business (taverns) in Frederick County. Mr. Stup stated that Frederick County does not have a Tavern License. Other jurisdictions do, but Frederick does not. Mr. Stup further stated the Board has to enforce what the State approves. Mr. Stup requested that she contact the delegation and Senator Young to see what can be done by the delegation.

Susie Glass, Owner of the Ott House in Emmitsburg, MD, stated she has been a licensee for 45 years asked is here to help the licensees. She believes that in today's economy it is nearly impossible for any restaurant to predict. It's an inaccurate statement and the rule is unreasonable to licensees. The licensee stated her business is based around the economy because her patrons are generally blue collar workers. If gas prices go up, her business goes down. People cannot afford to come out more than one time a week. She stated there are a lot of different issues that makes up what your business is. Mrs. Glass stated it would be nice if the Board sent out letters informing business owners about upcoming laws. Mrs. Dean stated that the Board does notify the licensees about upcoming law changes. Mrs. Glass stated that it will be very difficult for her business to meet these new requirements.

Mr. Stup stated for this filing the Board is allowing just percentages to be taken and they will have a discussion with the chair to see what direction they will further take. Ms. Dean stated that the Board has received quite a number of reports already and as far as getting the information to the public it will take extra time.

Gary Allen, Champions Billiards, feels that a lot of business will not make the required number based on the way business has been done in the past. He is concerned that once establishments present the business percentages and if they don't meet Board requirements there is a strong possibility that licensee's license will not be renewed. Mr. Stup stated he sees this as a way that the Board could better get licensees compliant. Mrs. Dean stated that she has been working for the Board for over 30 years and in the past other Boards have gone to the delegation to ask for a Tavern license and the delegation has not been supportive to the Board request. Many counties require forms similar to Frederick County. Ms. Hays asked is it possible to put in an emergency bill if we find that there is a reason for it.

Mike Long stated that asking the state to give Frederick County a Tavern License is not the right direction for the Board to take, a re-definition of what a restaurant license is what should be defined by the Board. He further stated this is a much more realistic approach. Mr. Long stated when the Board speaks to the delegation as to why this law doesn't work in today's business they will be justified. Food costs have changed since the early 60's, and beers were much cheaper but today beers are more expensive, and the food cost has to be discounted. Businesses would have to sell a lot of food to make the math work and that is not a fair representation of how much alcohol they are selling to the amount of food we are selling.

Mrs. Dean requested that the licensees provide her with their email addresses so that they may be notified about all upcoming public meeting and training that the county offers.

THE BOARD RECESSED FOR A 5 MINUTE BREAK BEFORE THE HEARING THE NEXT CONFERENCE.

4. Conference:

RE: Greg Burgee, Miles and Stockbridge

Attorney Greg Burgee, Office of Miles and Stockbridge, accompanied by Linda Carter Lowbear, represents Urbana Village Center, the shopping center in Urbana where Buffalo Wild Wings is located. Mr. Burgee stated the landlord is talking to a number of grocery stores about building a grocery store component of the shopping center and as part of that component some of the grocery stores have talked about not having a beer and wine store within the shopping center. The owner is contemplating adding a liquor store that would be adjacent to the grocery store. It would operate as an independent beer and wine store as part of the construction to the grocery store. The owner is fully aware of the restriction in Art. 2B on alcohol sales in groceries and supermarkets. Mr. Burgee wanted clarification on some questions he and Ms. Lowbear had regarding the structure of how this might occur. The construction would be that there will be a grocery store built adjacent to the grocery store and it would be independent beer and wine store. There is no license for this store. The question is whether the independent owner could retain as the manager an affiliate or the grocery store itself to manage its operation and could the employees of the grocery store be employees of the beer and wine independent operation? These are the questions that are being presented to the Board. Mr. Stup stated there is no prohibition in regard to who your manager is or who your employees are, as long as those employees are not licensees to another establishment, but Mr. Stup would like to get a reading from the state. Mr. Burgee stated that the statute speaks to ownership and operation. The grocery store would not

have any ownership of the beer and wine store. The licensee would be independent of the grocery store. Mrs. Hays asked if the employees would receive separate checks from each establishment. Mr. Burgee responded that the employees would receive independent checks through the independent companies. The sales tax would be filed in the owner's name. The statute does not speak to who can be manager of the independent establishment. Mr. Burgee asked, in terms of the conditional license, if the owner makes the investment to go forward with the project, and build the independent beer and wine store is there a period of time where the Board had ever decided where they can grant the conditional license on a conditional basis and then allow sufficient time for the construction if it goes outside of the cycle time. Mr. Burgee stated that this is a much larger project than your typical conditional license. Mr. Burgee asked if there is a rule on the length of time for a conditional license to get the store built? Mrs. Dean responded, the Board has been very supportive in giving extensions when necessary, but it is up to the Board on how many extensions they will give. Mr. Stup suggested that they make sure there are no issues at the State level.

MEETING ADJOURNED

Respectfully submitted,

Kathy Dean, Administrator
FREDERICK COUNTY LIQUOR BOARD

Prepared by Kendra Parker